SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 5 1971
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

No. 71-5191

RICHARD NEWTON BLAYLOCK, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROBERT G. CABELL, JR.
Counsel for
Richard Newton Blaylock, Jr.

WHITE, CABELL & PARIS
721 East Main Street
Richmond, Virginia 23219

TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES DISSOLVED	2
STATEMENT	2
ARGUMENT	4
CONCLUSION	7
CERTIFICATE	8

TABLE OF CITATIONS

United States v. Grier, 415 F.2d 1098 (4th Circuit 1969)	4, 6, 7
32 C.F.R. Section 1625.2	2

INDEX TO APPENDIX

Dependency Questionnaire (Items 36 thru 39)	1a-4a
Report of Information (Item 48), 1-15-70	5a
Letter (Item 47), 1-16-70	6a
Letter (Item 34), 3-3-70	7a
Letter (Item 33), 3-13-70	9a

Excerpts from Transcript of Proceedings

Testimony of Nathan H. Corman, Jr.:	
Direct Examination	10a
Cross-Examination	24a
Judgment and Commitment, 9-3-70	30a
Opinion of U.S. Fourth Circuit, 10-7-71	32a

Supreme Court of the United States

No. .....

RICHARD NEWTON BLAYLOCK, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Richard Newton Blaylock, Jr., prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

Richard Newton Blaylock, Jr. was indicted in the United States District Court for the Eastern District of Virginia at Richmond, Virginia, during the June 1970 term for the violation of Title 50, U.S.C.A., Section 462. The trial of the defendant commenced on July 17, 1970, before the Honorable Robert R. Merhige, Jr., Judge, without intervention of a jury. The defendant pleaded not guilty and after hearing the evidence, the defendant was found guilty and sentenced. From the judgment of conviction, the petitioner appealed to the United States Court of Appeals for the Fourth Circuit. The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was entered on October 7, 1971, affirming the decision of

the United States District Court for the Eastern District of Virginia. Said opinion is appended hereto (App. 32).

JURISDICTION

The judgment of the Court of Appeals was entered on October 7, 1971. The jurisdiction of this Court is invoked under 28 U.S.C.A. Section 1254 (1).

QUESTIONS PRESENTED

Did the Board, in recommending to the State Director re-opening of Appellant's classification and subsequently conducting an extensive investigation of Appellant's claim to a hardship deferment, in effect, re-open his case and entitle him to an appeal?

STATUTES INVOLVED

32 C.F.R. § 1625.2

> "Provided, in either event, the classification of a registrant shall not be re-opened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) or an Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

STATEMENT

The pertinent facts necessary for determination of this appeal are as follows: On April 14, 1966, Appellant registered with Local Board 54 in Henrico County, Virginia. He filled out the classification questionnaire and thereafter was classified 2-S (student). On April 14, 1969, he was reclassified 1-A. Pursuant to his physical examination, he

was found acceptable for military service. On June 2, 1969, the Board received a letter from Appellant relative to a dependency questionnaire the Board had sent him which stated that his father's health was poor and that Appellant was expected to be primary support for his father, sister and mother whom he lived with and were not able to work regularly. The Board re-opened his classification and re-classified him 1-A, which was appealed and affirmed by the Appeal Board. Thereafter, he was ordered to report for induction on September 24, 1969. On September 11, 1969, Appellant informed the Board that his father had died on September 8, 1969, and that he now was his mother's sole support. The Board postponed his induction date until after it met on September 25, 1969. At the Board meeting, Appellant appeared with other witnesses; and after the hearing, the Board still felt he should report at a later date. The Board then requested Appellant to appear before it on January 15, 1970. Item 48 of the Selective Service file (Government's Exhibit # 1, Vol. II of Appeal Record; App. p. 5), it is stated: "The Board recommends to State Director a reopening to give a 6-month deferment." This was with regard to a hardship deferment. The file was then forwarded to the State Director's Office who in turn returned it to the Board (Item 47; App. p. 6) noting that the Local Board could re-open under 1625.2 of CFR. The Board then requested a welfare report from Henrico County, Virginia, and sent a dependency questionnaire to Appellant (Item 39; App. p. 4) who responded as follows:

> "A. I left my annual contribution blank because I just started taking responsibility last September when my father died. Before that, I was contributing about $20 a week. I put all my earnings if necessary. My responsibility is to take over where my father left off since there is no one else to do so. My mother's health, age,

and education make it impossible for her to get a job. I am attaching letters of three friends to verify my position."

Item 11 is the minutes of the Board meeting in which they ruled that they did not want to recommend a re opening of the classification and that Appellant report for induction on March 24, 1970. The Appellant was not advised of his right to appeal this decision and subsequently refused to induct.

ARGUMENT

Did The Board, In Recommending To The State Director Re-opening Of Appellant's Classification And Subsequently Conducting An Extensive Investigation Of Appellant's Claim To A Hardship Deferment, In Effect, Re-open His Case And Entitle Him To An Appeal?

The matter for decision by this Court is simple. Does the factual situation in this case parallel the case of *United States* v. *Grier*, 415 F.2d 1098 (4 Cir. 1969). In that case, Grier had been classified 1-A when he requested that he be reclassified under a hardship deferment. Grier stated in his letter that his mother was a mental invalid and that his brother was a student, which meant that his family was primarily dependent upon him for support. There was information in Grier's Selective Service file pertaining to his claim for a hardship deferment prior to the receipt of this letter. The clerk of the local board sent a written reply on July 10, 1967, requesting a physician's statement as to the mother's condition. On August 3, 1967, the local board received from Grier a Selective Service Form Number 118 (dependency questionnaire) in which he set out substantially the same facts recited by his earlier letter.

The local board requested a welfare report on Grier's family on August 31, 1967; the county welfare department

submitted a report which was received by the local board on September 11, 1967, confirming Grier's statement that his mother was a mental invalid and disclosing that she was receiving $61.00 monthly in welfare payments.

On September 15, 1967, the local board sent a letter to Grier's brother, Alphonso, requesting him to meet with the board on September 19, 1967; Alphonso met with the board as requested and answered questions about the family's situation. On September 19, 1967, the local board sent a letter to defendant Grier, stating that the board felt it could not grant him a hardship deferment at that time. In the form of recording "minutes" on the back of Grier's Classification Questionnaire, the local board noted under the date of September 19, 1967, "file reviewed not re-opened."

This Court, in reversing his conviction, held on page 1101:

[3, 4] It is abundantly clear that the board's extensive investigation—including the procurement of a report from the county welfare department on the condition of Grier's mother and the holding of a personal interview with Grier's brother—was, in effect, a re-opening of the classification. The statements found in *Miller* v. *United States,* 388 F.2d 973, 976 (9 Cir. 1967), seem most appropriate.

"The local board did not deal with the alleged facts or evidence of appellant's conscientious objector form as a question of whether this legally could provide basis for a re-opening to be made, so as to entitle consideration and evaluation to be engaged in thereafter under the general classification procedure of the regulations. It shortcut the situation by directly proceeding, without purporting to re-open, to a consideration of whether appellant was entitled to a conscientious objector classification on the merits of the probative elements of its file.

"No more, in our opinion, is it validly possible for these rights [to appear, be heard, and appeal] to be cut off as to a conscientious objector claimant by a local board's choosing not to re-open, but to nevertheless engage in a similar consideration of the situation upon its merits, and then to accord to its classification result the status of a denial merely of the claimant's motion to reopen."

Here, Grier was deprived of his right of appeal by the local board's failure to treat his classification as re-opened. A registrant's right of appeal following a re-opening of his classification is established by 32 C.F.R. 1625.13. Denial of such right is a denial of due process from which Grier is entitled to relief. Accordingly, the order requiring Grier to report for induction was void and his conviction cannot be permitted to stand.

In the instant case Appellant had been classified 1-A and ordered to report for induction before his father died. Thereupon he notified the Board of the new developments. The Board set out to investigate this new material and, in fact, recommended the re-opening of his classification to the Appeals Board thinking that they did not have the authority so to do. When they were told that they did by the Appeals Board they ordered an investigation by the Henrico County Welfare Department, interviewed Appellant again and then determined not to reopen. The only distinguishing feature of this and the *Grier* case, *supra*, is that Appellant had been ordered to report for induction and Grier had not. Reference is made to part of Title 32 C.F.R. § 1625.2:

> "Provided, in either event, the classification of a registrant shall not be re-opened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) or an Order to Report for Civilian Work and Statement of Employer (SSS

> Form No. 153) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

Appellant was ordered to report for induction on September 24, 1969, by order of August 15, 1969. On September 11, 1969, Appellant advised the Board his father had died on September 8, 1969. Patently, this amounted to a change in Appellant's status resulting from circumstances over which he had no control. The Board by its subsequent action indicated that its thinking was that a reopening was indicated. It is submitted that his case and Grier are basically the same. As quoted in *Grier* at page 1100:

> "The re-opening of a classification is, in effect, the equivalent of a new classification and the registrant is entitled to the same right of appeal as in the case of an original classification. 32 C.F.R. 1625.12, and 1625.13."

CONCLUSION

For the reasons stated, it is hereby respectfully submitted that a Writ of Certiorari be issued to review judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

RICHARD NEWTON BLAYLOCK, JR.
By Counsel

ROBERT G. CABELL, JR.
721 East Main Street
Richmond, Virginia 23219
Counsel for Petitioner

CERTIFICATE AND AFFIDAVIT

I hereby certify that a true and complete copy of the foregoing Petition for a Writ of Certiorari and attached appendix was delivered by hand by me on the 5th of November, 1971, to the Office of the United States Attorney, Eastern District of Virginia, Post Office Building, Richmond, Virginia, and the Solicitor General, Department of Justice, Washington, D. C. 20530, in full compliance with Rule 33, and related provisions of law, of the Rules of the Supreme Court of the United States.

/s/ ROBERT G. CABELL, JR.
Robert G. Cabell, Jr., Attorney

STATE OF VIRGINIA }
CITY OF RICHMOND } to-wit:

This day personally appeared before me, Robert G. Cabell, Jr., who, after being sworn, made oath that the foregoing Certificate and statements set forth therein are true.

Given under my hand this 5th day of November, 1971.

My commission expires: 7-11-75.

/s/ PAULA KENNEY EAGER
Notary Public

Appendix

(Item 36)

SELECTIVE SERVICE SYSTEM

Budget Bureau No. 33-R010

DEPENDENCY QUESTIONNAIRE

LOCAL BOARD NO. 54
Henrico County
400 North Eighth Street
Richmond, Virginia 23219
(Local Board Stamp)

DATE QUESTIONNAIRE RETURNED

Date of Mailing January 20, 1970

COMPLETE AND RETURN BEFORE AT ONCE

1. Name of Registrant (Last) (First) (Middle)	2. Selective Service No.	3. Date of Birth (Month) (Day)	4. Class
Blaylock Jr. Richard Newton	44 54 48 335	April 14	1-A

5. Mailing address: 107 S. Ivy Ave., Highland Springs Virginia 23075
(Number and street or R.F.D. route) (City, town, or village) (County) (State) (Zip code)

(The above items, except the date questionnaire returned, are to be filled in by the local board before questionnaire is mailed) (BC)

INSTRUCTIONS (Read Carefully)

1. The law requires you to complete and return this questionnaire on or before the date shown to the right above in order that your local board will have information to make a determination on your request for deferment on grounds of dependency.
2. When a question in any series does not apply, enter "NONE" or "DOES NOT APPLY."
3. You and a claimed dependent(s) may enter on page 4, any statements you feel may be important.
4. The information you furnish should be accurate and will help the local board to properly classify you.
5. Your statements will remain confidential, as prescribed by Selective Service Regulations.
6. FILL OUT WITH TYPEWRITER, OR PRINT IN INK, EXCEPT FOR THE SIGNATURES.
7. Be sure you sign and date the form in the appropriate places.

Barbara H. Robinson
(Member, Executive Secretary, or Clerical Assistant)

STATEMENTS OF THE REGISTRANT

CONFIDENTIAL AS PRESCRIBED IN THE SELECTIVE SERVICE REGULATIONS

LOCAL BOARD NO. 54
Henrico County

JAN 27 1970

Series I.—MARITAL STATUS AND DEPENDENTS

1. (a) I (check one): ☒ have never been married ☐ am a widower ☐ am married ☐ am divorced

(b) I (check one if applicable): ☐ DO ☐ DO NOT live with my wife; if not, her address Richmond, Virginia

(c) We were married at (Place), on (Date)

2. (a) I have the following children under 18 years of age who live with me in my home:

Name Age Name Age

Name Age Name Age

(b) If you have no children listed under 2(a) above, and your wife is pregnant, attach a physician's statement that the child has been conceived, the probable date of its delivery, and the evidence upon which his positive diagnosis of pregnancy is based.

3. (a) List below the persons, other than children listed in 2(a) above, who are wholly or partially dependent upon you for support and show appropriate information.

(b) IF ANY DEPENDENT IS PHYSICALLY OR MENTALLY HANDICAPPED, ATTACH A PHYSICIAN'S STATEMENT AS TO THE PERSON'S CONDITION.

Dependent	Relationship	Age	Approximate Annual Income	Amount Contributed By Me Annually
Name Mrs. Richard N. Blaylock,Sr. Address 107 South Ivy Ave.	mother	56	$ none	$
Name Cynthia A. Blaylock Address 107 South Ivy Ave.	sister	20	$2,000	$
Name Address			$	$
Name Address			$	$

SSS Form 110 (Revised 3-6-69) (Previous printings obsolete)

(1)

BEST AVAILABLE COPY

(Item 37)

SECTION II—ASSISTANT'S STATUS

List below all the living members of your immediate family who are 16 years of age or over, other than those listed in Section I, including your father, mother, brothers, sisters, father-in-law and mother-in-law. (Use page 4 if necessary)

	Relationship	Age	Approximate Annual Income	Amount You Contribute to Support
Name [redacted] Address [redacted]	Brother	22x		
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				

37

SECTION III—EMPLOYMENT STATUS OF REGISTRANT

1. My total income from all sources during the last 12 months was $ 3,581.80 Of this amount, $ 3,581.80 was in salary or wages; $ none was in other income.

2. The job I am now working at is Asst. Mgr. of Sears Garden Shop
(Give full title of your job)

3. My average earnings from this employment are $ 85.00 approx per week, before taxes.

4. My employer is Sears Roebuck & co. 4901 Nine Mile Rd., Richmond, Va.
(Name of company or proprietor. If working for yourself, enter "Self.")
4901 Nine Mile Rd. Richmond, Virginia
(Address of place of employment—Street or rural route, city, and State)

5. I have worked at this job since August, 19 68
I have been unemployed since ____, 19 ____

Started as a part time employee and went to full time in Feb., '69

SECTION IV—FINANCIAL CONDITION

1. I (Check one): ☒ own my own home. ☐ am buying my own home (Complete 2 below). ☐ am renting my living accommodations (Complete 3 below).

House is in my mothers name.

2. Amount of original mortgage was $ 7,000 and the balance due is $ nothing
Monthly payments of $ ____ are made to ____
(Name and address)

3. I pay rent in the amount of $ ____ per month to ____
(Name and address)

4. I (Check one): ☒ DO ☐ DO NOT own an automobile used primarily for going to church, work, shopping, and going to doctors.
It was purchased ☐ New ☒ Used on February 24, 1969 and I still owe approximately $ none of the purchase price. Balance was paid off by insurance when my father died, which also paid off the car loan.

5. Itemize below all your monthly expenses. (Use additional sheet if necessary)

Item	Amount	Item	Amount
Food	$ 160.00	Tax on House (approx.)	$ 10.00
Telephone	$ 7.70	Fire Insurance	$ 2.00
Electricity	$ 14.22	Automobile Insurance	$ 29.00
Insurance	$ 26.31	Gasoline	$ 15.00
Hospitalization	$ 30.50	Water	$ 8.00
Heating	$ 30.00		

This doesn't count for any medical expenses which is approx. $15 p.w.

BEST AVA

(Item 38)

1. My wife (Check one) ☐ IS ☐ IS NOT working at a job for pay.

2. She is employed by _____
(Name employer and address)
as _____
(Position or kind of work)

3. Her earnings are $_____ per ☐ HOUR ☐ DAY ☐ MONTH ☐ YEAR

4. She was last employed as _____
(Date employment ended—if never employed, so state)
by _____
(Name and address of wife's former employer)

(38)

REGISTRANT'S CERTIFICATE

I certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief.

Registrant signs here [illegible]

Richard Wayne Hayslip
(Signature or mark of registrant)

Date January 21,1970

107 South Ivy Avenue
(No. and Street or P.O. address)

Highland Springs, Virginia 23075
(City) (State) (Zip Code)

_____
(Signature of witness to mark of registrant)

Telephone No. 737-0637

If another person has assisted you in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because _____
(For example—registrant unable to read and write English, etc.)

_____
(Signature of person who has assisted)

_____
(No. and Street or P.O. address)

Date _____

_____
(City) (State) (Zip Code)

NOTICE TO REGISTRANT

YOU OR YOUR DEPENDENT MAY ENTER ON PAGE 4 OR ON ATTACHED SHEETS ANY ADDITIONAL STATEMENTS WHICH YOU BELIEVE SHOULD BE BROUGHT TO THE ATTENTION OF THE LOCAL BOARD FOR CONSIDERATION IN DETERMINING YOUR CLASSIFICATION. IF YOUR DEFERMENT REQUEST IS FOR HARDSHIP CONSIDERATIONS OTHER THAN FINANCIAL, SET FORTH SUCH CLAIM IN DETAIL IN THIS SECTION. YOU MAY ATTACH STATEMENTS OF PHYSICIANS, NEIGHBORS, FRIENDS, RELATIVES, ETC., WHO ARE FAMILIAR WITH THE FACTS UPON WHICH YOUR CLAIM IS BASED.

(3)

LABLE COPY

(Item 39)

Series VI—STATEMENT OF CONTRIBUTION
(Use additional sheets if necessary)

I left my annual contribution blank because I just started taking responsibility last September when my father died. Before that I was contributing about $20.00 a week. I put all my earnings if necessary. Now my responsibility is to take over where my father left off,since there is no one else to do so. My mother's health, age,and education makes it impossible for her to get a job.I am (39) attaching letters of three friends to varify my position as I am stating now and as I have stated in the past. I am sorry for the length of time it took me to fill this form out but it couldn't be helped.I called Mrs. West and she said it would be alright as long as I had the form in within a week. Richard Taylor Blaylock Jr.

January 26,1970
(Date)

Series VII—STATEMENT OF DEPENDENT
(Use additional sheets if necessary)

Without Richard Jr. ab home for my support I will not be able to maintain my home for my daughter and myself. My daughter's health is bad and with her having to miss from work for sickness, I don't know how we can get on the help all she can but she doesn't make enough to support the two of us. Also with my son not being home I will not have the assistance taking care of around the home and this would make my expenses go up. Also my son not being home would have a physcological effect on my daughter as she looks to him since her father passed away she has always had a nervous breakdown while she was in school and left to be tatooed. Mrs. Bessie M. Blaylock
(Signature of Dependent)

January 26, 1970
(Date)

BEST AVAILABLE COPY

(Item 48)

Selective Service System

REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO.
44 54 48 335

Class or Category N/A

LOCAL BOARD NO. 54
Henrico County
400 North Eighth Street
Richmond, Virginia 23240

Information Received by ☑ Personal Visit
☐ Telephone ☐ Mail

1. Name (Last, First, Middle) Blaylock, Jr. Richard N.
2. Date of Birth April 14, 1948

3. Present Mailing Address
107 S. Ivy Avenue, Highland Spgs. Va.

4. New Information (marriage, employment, dependency; death of registrant, reservist, or claimed dependent)
Board wanted to talk to reg. at the Jan. 1970 meeting, about a hardship case. Reg. states that there is no change in status other than his health. Reg. also states that he handles all the bills at home. The board recommends to state director a re-opening to give a 6 mths. deferment.

5. Source of Information
☑ Registrant ☐ Relative
☐ Employer ☐ Other (Indicate)

Signature
(Mrs.) Carol Ann West
Executive Secretary /s/ Carol Ann West

Date: Jan. 15, 1970

(Item 47)

STATE HEADQUARTERS FOR SELECTIVE SERVICE
400 North Eighth Street
Richmond, Virginia 23240

16 January 1970

Local Board No. 54
Henrico County

SUBJECT: BLAYLOCK, JR., Richard Newton
44-54-48-335

Dear Sir(s):

(X) The file of the subject is enclosed.

( ) The file of the subject is forwarded for adjudication.

( ) The file of the subject is forwarded as requested by

( ) Complete and distribute the enclosed SSS Forms 154 as per instructions on reverse side.

( ) The enclosures are forwarded requesting an Advisory Recommendation.

(X) Local board can act under 1625.2 but should have 118 with welfare report first.

FOR THE STATE DIRECTOR:

/s/ Chester D. Harding
Chester D. Harding
Lt. Colonel, Infantry
Deputy State Director

CDH:lwp

LOCAL BOARD NO. 54
Henrico County
Jan. 19, 1970
Richmond, Virginia 23240

(Item 34)

COUNTY OF HENRICO
Commonwealth of Virginia

March 3, 1970

Miss Barbara H. Robinson,
Clerical Assistant
Selective Service System
Local Board #54
Henrico County
400 North 8th Street
Richmond, Virginia 23240

Local Board No. 54
Mar. 4, 1970
Henrico County
Richmond, Virginia

Subject: Richard N. Blaylock, Jr.
107 South Ivy Avenue
Highland Springs, Virginia

Dear Miss Robinson:

As requested in your letter of January 20, we have investigated the request of Richard N. Blaylock, Jr. for a hardship deferment. We have interviewed Mr. Blaylock and his mother, Mrs. Richard Blaylock, Sr., and both state the deferment is requested on the basis of Mr. Blaylock's support of his mother.

Mr. Richard Blaylock, Sr. died in September and according to Richard and his mother, Richard has been contributing approximately $50 per week towards the household expenses since his father's death. A sister who lives in the home also is employed at Thalhimers and contributes $20 per week. According to Mrs. Blaylock this girl was bothered with a nervous condition in high school and had to have a homebound teacher for two years. She finished high school last summer and has been employed regularly since September. Her earnings are reportedly $59 per week gross. We did not verify this amount.

(Item 34)

Mrs. Blaylock tells us she has no income of her own other than what Richard and his sister, Cynthia, give and has not been employed since 1963. She states she is not able to work because of vericose veins and household responsibilities. She does not go to a doctor regularly and is taking no medication. She states she has approximately $2,000 saved and has applied for VA widow's benefits.

In discussing monthly expenses, we learned the home is paid for, they have no outstanding debts, and no regular medical expenses.

As Mrs. Blaylock has $2,000 saved, should receive VA widow's benefits, her daughter in the house is employed full-time, and Richard can apply for an allotment for her, we cannot recommend deferment in this case.

If we can be of further service, please contact us.

Sincerely yours,

/s/ Cleo Warlick
Miss Cleo Warlick
Supervisor

(Item 33)

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 54
Henrico County
400 North Eighth Street
Richmond, Virginia 23240

In Reply, Refer to:
44-54-48-335

March 13, 1970

Richard N. Blaylock Jr.
107 S. Ivy Ave.
Highland Springs, Virginia

Dear Sir:

This is to advise you that the Local Board members did not want to recommend a re-opening of your classification. Therefore, you are ordered to report for induction on March 24, 1970 at 8:00 A.M. You are to report to the Armed Forces Examining and Entrance Station, 11th and Main Sts., Parcel Post Building, Richmond, Virginia.

This is an official notice of induction.

By Direction of the Local Board.

/s/ Barbara H. Robinson
Barbara H. Robinson
Clerical Assistant

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

July 17, 1970

* * *

[4] NATHAN H. CORMAN, JR.

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified on his oath as follows:

[5] DIRECT EXAMINATION

BY MR. WILLIAMS:

* * *

[6] Q Major Corman, I ask you to look at the file and ask you whether the file reflects the defendant Blaylock was a registrant for the draft and what date?

A Yes, sir. It shows he registered on April [7] 14, 1966, and became a registrant of Local Board for Henrico County, Virginia, which is Local Board Number 54.

Q Major Corman, I ask you to look in the file and ask you what item 11 is in the file?

A Numbered item 11, the last page of the classification questionnaire, is a form for noting down the minutes of actions of the Local Board and the Appeal Boards and other actions by the Local Board.

Q Does this record reflect the last time the defendant had a status as a student, when his classification was as a student?

A According to the record he was classified in Class

2-S on the 16th of August, 1968. This was the last time he was in the deferred classification.

Q I ask you to look at that same sheet, the item 11 of the file. Was there a time after that that he was reclassified?

A Yes, sir. On the 14th of April, 1969, he was reclassified in the Class 1-A by the Local Board.

Q Was the defendant notified of this classification?

A Yes, sir. The Form 110 was mailed on the same date according to the record.

Q Did there come a time when the defendant was ordered to report for a pre-induction physical?

[8] I direct your attention to item 85.

A Yes, sir. On the 18th of April, 1969, the registrant was ordered to report for a physical examination on the 26th of May, 1969.

Q What was the result of this examination? Was he examined on the 26th?

A Yes, sir. According to the records of the examination, which are item 14 through 32, I guess it is, 35, he was examined, reported for the examination on the 26th of May, 1969, and on that date was determined to be acceptable for military service.

Q I see.

Now, I direct your attention to item 80 in the file and ask you if at any later time any further action was taken by the defendant regarding the defendant Mr. Blaylock by the Board?

A Item number 80 is a copy of the DD Form 62 which is a statement of acceptability. This is prepared by the induction station after the examination. A copy of this form was mailed to the registrant on June 3, 1969. This form indicates the registrant has been found acceptable for induction into the armed forces.

Q Major Corman, I direct your attention to item number 76 in the file and ask you if the Board received any documents or new information from the de-
[9] fendant?

A Well, item number 76 is the first page of the Selective Service Form Number 118 which is entitled "Dependency Questionnaire." It is a four-page document. This was completed by the registrant and his mother and the dates of their signatures are May 30, 1969, and this was received by the Board on June 2, 1969.

Q What, Major, is series seven in this particular file item?

A Series seven is a statement of the registrant. This is on page 79 of the file.

Q Page 79.

Now, for the purposes of the record was there any statement in that item 79? Would you be able to read it to the record, I believe the Court has a copy, of any statement made by the registrant in that?

A There is a statement that fills up the complete space.

I should read it?

Q With the Court's permission.

THE COURT: All right.

THE WITNESS: "I am just starting to help out my parents. My father's salary is not quite sufficient enough. My mother is age 56. Leaves her where she can-
[10] not get a job and my sister is not working full time.

"With my father's health this way I don't know when it will be that I may have to be completely supporting my family. He has had two heart attacks this year (January), appendicitis, gall bladder and pancreas trouble. I didn't start working regularly until two months ago after my father had his heart attacks and returned home from the hospital.

"I was also going to school up until that time.

"Signed Richard Newton Blaylock, Jr., under date of May 30, 1969."

BY MR. WILLIAMS:

Q Now, after this document was submitted to the Board I ask you if the defendant was next classified after that?

A Yes sir. The Local Board reopened his classification on June 9 and reclassified him in the Class 1-A again. The notice 110 and notice Form 217 were mailed to him on that same date.

THE COURT: What item is this?

THE WITNESS: This is item number 75, the notice of or advice of right of personal appearance.

THE COURT: Thank you.

THE WITNESS: The Form 110 is the usual form. There is a notation on page 11.

[11] BY MR. WILLIAMS:

Q Was his classification appealed, Major?

A Yes, sir, the record shows that item 73 and 74, the registrant's mother noted an appeal of his classification in the Class 1-A. She is claiming to be a dependent of the registrant.

Q Is there any indication in these items 72, 73, 74——

THE COURT: 73 and 74.

MR. WILLIAMS: I am sorry.

BY MR. WILLIAMS:

Q 73 and 74, is there any indication in there, Major Corman, whether the registrant's father, Mr. Blaylock, was still working at that time?

A Yes, sir. At the bottom of item 73 the last sentence, the references to or the sentence in the letter has reference to, the last sentence begins, "He can just work his regular job and he is still under the doctor's care

taking his Demerol. He has pain in his heart."

This is the letter signed by the mother.

Q Was the appeal granted? Was there an appeal?

A Yes, sir. The complete file was forwarded to the Appeal Board or the Appeal Board for the Eastern Federal Judicial District of Virginia on July 9, 1969, and the Appeal Board on 7 August 1969 classified the reg-
[12] istrant in Class 1-A by a vote of three to zero.

Q Is that item 71, Major?

A 71, yes, sir.

Q Is this also reflected in the minutes of the Board? In other words, item 11?

A Yes, sir. On item 11 it shows, there is an entry referring to the classification by the Appeal Board on that date and reflects that on August 11 the classification notice SS Form 110 was mailed to the registrant.

A I see.

May I direct your attention to item 70 in the file and ask you what, if anything, occurred next? Did the Board take any further action, the Local Board take any action after the Appeal Board made its decision?

A Item 70 is a copy of SS Form 252 which is the order to report for induction directed to the registrant directing him to report for induction on the 24th of September, 1969.

Q Major, what is the date that the induction order was mailed out?

A It was mailed on the 15th of August '69.

Q Major Corman, I direct your attention to item 69 in the file and ask you if the defendant, Mr. Blay-
[13] lock, took any action after receipt of the notice of induction?

A Well, item 69 is a mimeograph form letter forwarded to the Local Board by a Navy recruiter in Rich-

mond. The letter requests certain records stating that the registrant has applied for enlistment in the United States Navy and the bottom part of the letter contains an endorsement by the registrant requesting that the Local Board furnish the form requested to the recruiter.

Q Major Corman, from your experience with Selective Services is there any difference, to your knowledge, as far as military pay scales between Army and Navy?

A No, sir. The pays for rank or grade are the same throughout the military establishment.

Q Major, I direct your attention to item 64 and 65 in the file and ask you if anything had occurred, did the defendant advise the Board of any occurrence?

A Item 65 is a report of information dated the 11th of September, 1969, and states that the registrant called by phone, I presume, and stated that his father had died on September 8 and that he was needed in the home to help his mother. Item 64 is the letter signed by Mr. Newton stating that he was appealing his draft notice and goes on to state that the reason was that his father died suddenly on Monday, September 8 of a heart attack and he should now be allowed to take care of his mother.

[14] Q Major Corman, I direct your attention to item 63 and ask you if as a result of this did the Board take any action?

A 63 is a form indicating that the Board postponed Mr. Blaylock's induction originally set for the 24th of September until after the Local Board had met on September 25.

Q What, if anything, occurred on September 25 when the Board met? I direct your attention to item 60.

A Item 60 is a brief resume of apparently what was discussed at the Local Board office on the 25th of September. It indicates that Mr. Blaylock discussed his case

with the Board, gave some information concerning the situation surrounding his mother and sister. It shows further that the mother and the uncle also talked to the Local Board about the situation of the registrant and goes on to conclude that the Local Board advised the registrant and his mother after they had gone over the case that they did not feel justified in recommending any action be taken in this case.

Q Did they give any other specific information that you were aware of from the file to the defendant?

A Did they give information to the defendant?

[15] Q Yes.

THE COURT: He wants you to look at the last sentence.

THE WITNESS: The last sentence is that the mother was directed to the State Director's Office when she asked if she could talk with someone higher. Also in the body of the form the registrant was told of allotments from the Army. I presume this was or he was given information concerning the fact that even in the military service allotments to his mother could be furnished.

BY MR. WILLIAMS:

Q From your experience in the military what are allotments? How do they work, very briefly?

A An allotment is, I guess briefly is a portion of the individual's pay that can be taken out of his pay and directed to some individual or institution that he may determine or as he may determine. It is sort of a withholding of the pay that might be sent to someone else. There re also, in cases of dependency, there are provisions whereby the Government furnishes an additional amount of certain dependents adding onto the allotment that the individual has taken from his own pay allowances.

Q I see.

[16] Major, I direct your attention to item 58 and 59 and ask you if there were any new orders received by the defendant, Mr. Blaylock?

A Item 59 is a letter directing him to report, that the postponement had expired and he was to report on the 28th of October, 1969.

Q Was he actually inducted on that date, October 28?

A No, sir.

Prior to the actual induction date the registrant's induction was again postponed by the State Director until further notice. This is item number 58. The notice to the Local Board to postpone the basis of which was there was a request received to deliver the registrant back to the examining station for further physical examination. He was directed to report to the Richmond examination station on the 24th of October for an orthopedic consultation.

Q Is that item 57?

A Item 57.

THE COURT: Yes.

BY MR. WILLIAMS:

Q Major, I think——

THE COURT: Wait a minute. Before you get off that, Mr. Williams, can you tell me what precipitated that?

THE WITNESS: Yes, sir. There was an in-

[17] quiry, apparently. Let me think a minute. We received an inquiry from the examining station about the man's status. They had, I believe, the Surgeon General Office at USAREC, Colonel Scalitzer received some sort of Congressional inquiry and he made an inquiry to the induction station about the man's status. The station came to us and rearranged for Mr. Blaylock to be delivered for additional physical testing on that date.

THE COURT: I see.

BY MR. WILLIAMS:

Q Major Corman, I direct your attention to item 18 and ask you whether the orthopedic consultation was carried out?

A Let's see. Item 18 is a copy of the consultation sheet which was signed by Dr. Stewart Hirsch, who is an M. D. at the Kenner Army Hospital in Petersburg indicating that the registrant did report to the orthopedic clinic at Kenner Hospital on the 24th of October and that testing was done, examination was given, and that Dr. Hirsch concluded that after his examination that the final impression was normal examination of feet. This examinee is fit for induction according to AR 4501 without any specific limitation referable to his feet.

Q Now, I direct your attention to item 50,
[18] Major, and ask you if Mr. Haylock's medical records were ever reviewed by higher military or medical authority?

A Item 50 is a copy of a letter directed by the Surgeon General of the U. S. Army Recruiting Command to Congressman Satterfield advising that he had reviewed Mr. Haylock's complete medical records and determined that he is medically qualified under the current fitness standards for induction.

Q Major Corman, I direct your attention to item 48 and ask you if there came a time after he received his induction notice that the defendant appeared before the Board?

A Yes, sir. By letter dated December 24, 1969, the registrant was advised that he should—that he was requested to appear before the Local Board members for interview on the 15th of January.

Item 48 is a brief report of information of this meeting. It shows that he appeared before the Board and talked

to them on the 15th of January, 1970.

Q Now, I ask you to look at item 48 and what is item 48 and what does it indicate, if anything?

A I will read briefly. I will read the information entered.

The Board wants to talk to registrant at meeting about a hardship case. Advised no change other than
[19] health. Registrant also states that he handles all the bills at home. The Board recommends to State Director a reopening to give a six-months deferment.

Q Now, was the case reopened at that time?

A The file was forwarded to the State Director's Office and item number 47 was returned to the file with a notation that Local Board had the authority in our opinion to act under part 1625.2 of the regulations, but we recommended that before they act they should have a Form 118, which is a dependency questionnaire completed and a welfare report secured.

Q I ask you whether the Local Board took any action as far as investigating welfare or dependency?

A Yes, sir. Item 46 is a letter directed from the Local Board to the Superintendent of the Department of Welfare of Henrico County requesting that they make an investigation of the case with an actual visit to the home and to refer the information they acquired back to the Local Board.

Q I see.

Now, directing your attention to item 36. I ask you whether the Board received any new information or new documents from the defendant, Mr. Blaylock?

A Item 36 is another Selective Service Form
[20] Number 118 and dependency questionnaire which was completed signed by the registrant under date

of January 21, 1970, and submitted to the Local Board on January 27, 1970.

Q I believe it is series seven. Was a series seven entry filled out in this new dependency questionnaire?

A I believe there has been a slight change. Series seven in the previous form was statement of registrant, I believe.

Q I will rephrase the question. Was there any statement by Mr. Blaylock in the new dependency form?

A Yes, sir. This happens to be a series 60, this particular issue.

Q All right.

A He completed this series in the form.

Q What item is that as far as our page number?

A Page or item 39.

Q Major, would you read into the record what statement the defendant made in that item, item 38?

A I left my annual contribution blank because I just started taking responsibility last September when my father died. Before that I was contributing about $20 a week. I put all my earnings if necessary. My responsibility is to take over where my father left off since there is no one else to do so. My mother's health, age, and education make it impossible for her to get a job.

[21] I am attaching letters of three friends to verify my position. I am stating now as I have stated in the past, I am sorry for the length of time it took me to fill this form out but it couldn't be helped.

I called Mrs. West and she said it would be all right as long as I had the form in within a week.

This is signed by Mr. Blaylock on January 26, 1970.

Q Major Corman, I direct your attention to item 34 and ask, did the Local Board ever receive the results of the Henrico County investigation?

A Item 34 is a letter received from the County of Henrico Department of Welfare signed by Miss Cleo Warlick, Supervisor.

Q This is the last item I will ask you to read in its entirety. Would you read that into the record?

A Addressed to Miss Robinson, Clerical Assistant.

"Dear Miss Robinson: As requested in your letter of January 20, we have investigated the request of Richard N. Blaylock, Jr., for a hardship deferment. We have interviewed Mr. Blaylock and his mother, Mrs. Richard Blaylock, Sr., and both state the deferment is requested on the basis of Mr. Blaylock's support of his mother.

"Mr. Richard Blaylock, Sr., died in September
[22] and according to Richard and his mother, Richard has been contributing approximately $50 per week towards the household expenses since his father's death. A sister who lives in the home also is employed at Thalhimers and contributes $20 per week. According to Mrs. Blaylock this girl was bothered with a nervous condition in high school and had to have a homebound teacher for two years. She finished high school last summer and has been employed regularly since September. Her earnings are reportedly $59 per week gross. We did not verify this amount.

"Mrs. Blaylock tells us she has no income of her own other than what Richard and his sister, Cynthia, give and has not been employed since 1963. She states she is not able to get work because of varicose veins and household responsibilities. She does not go to a doctor regularly and is taking no medication. She states she has approximately $2,000 saved and has applied for VA widow's benefits.

"In discussing monthly expenses we learned the home is paid for, they have no outstanding debts and no regular medical expenses.

"As Mrs. Blaylock has $2,000 saved, should receive VA widow's benefits, her daughter in the home is employed full time, and Richard can apply for an allotment for her, we cannot recommend deferment in this
[23] case.

"If we can be of further service, please contact us.

"Signed by Cleo Warlick."

Q What date was that? What date was that item received?

A It is dated May 3, 1970.

Q Is that May or March?

A March.

Q Directing your attention to, Major, to items 11, the minutes of the Board and item 33, I ask you if the Board took any action after receiving this Welfare information?

A According to item 11 it shows that the file was considered at Board meeting. No action justified. Item 33 is a letter under date of 13 March, 1970 addressed to Mr. Blaylock. "This is to advise you that the Local Board members did not want to recommend a reopening of your classification. Since your postponement of induction has expired, you are to report for induction on March 24, 1970, at 8:00 a.m. You are to report to the Armed Forces Examining and Entrance Station, Parcel Post Building, 11th and Main Streets, Richmond, Virginia."

Q Major Corman, does the file reflect what, if anything, occurred on March 24? Did the defendant report to the examining station?

[24] A Item number 12 is a copy of a letter from the Armed Forces Examining and Entrance Station signed by R. W. Sanderson, First Lieutenant, Assistant Adjutant, and indicates that Mr. Blaylock did report to

the induction station on that day and after appropriate processing refused to be inducted.

Q Now, does the record indicate, and I refer your attention to item 18 and 20, when did he report, and whether he was physically examined at the induction station on March 24?

A Well, actually item 17 which is the reverse side of the standard Form 88 at the bottom has a stamp under date of March 24, 1970, and shows that Dr. Arnold E. Postlethwaite initialed the stamp and the stamp reads, "No disqualifying defects or communicable diseases were noted this date."

Items 18 and 20 also bear the same stamp and the initials of Dr. Postlethwaite.

Q So I direct your attention to items 18 and 20 and again ask you whether any indications —whether prior medical claims were accounted for in reviewing the medical profile of Mr. Blaylock?

A Item 18.

Q I am sorry. Those would be the—yes, I believe items 18 and 20.

A Item 18 is the copy of the orthopedic spe-
[25] ialist's consultation at Fort Lee on the 24th of October. On there in the heading are the instructions to the doctor from the doctor to the station there is an indication or entry, "Please evaluate planter wart cyst—excuse me—"Pes planus and cyst at distal end of fifth right metatarsal. I do not find any pes planus in this individual."

Q Was there any indication as far as March 24 whether that was taken into account?

A There is a statement or a stamp on this particular form to show that it was reviewed by Dr. Postlethwaite on the 24th of March. There is no indication of any entry

made other than that on that date.

Q I see.

At this point after this physical examination was the defendant qualified for induction at that point?

A Yes, sir. According to the stamp they found no disqualifying defects. And it is known in terminology at the station as a—not a medical examination, a medical interview type of review. He is not given a complete medical examination at this time unless there is some indication that he should have a complete examination.

* * *

[27] CROSS-EXAMINATION

BY MR. CABELL:

Q Major Corman, directing your attention now again to item 48 of the report of information, what does the record show with regard to the event that produced the Board requesting the defendant's appearance?

A The only notice in here is a letter item 49 requesting—it was a letter written to Mr. Blaylock requesting that he appear before the Board members for in-

[29] terview on the 15th of January.

Q Now, the record then is silent as to the reason for the Board on its own motion to call the defendant in for a personal appearance?

A That is correct, sir.

Q All right.

Now, in item 48, which is the summary of that meeting with the defendant, the Board did recommend to the State Director that his classification be reopened?

A That is the statement here, yes, sir.

Q All right.

Now, then, it was, the file was sent to the State Director's

Office and he returned it immediately saying that the Board had the jurisdiction and authority to act on the matter and suggesting that it be referred for a welfare investigation?

A Yes, sir. Item 47 speaks for itself.

Q All right.

Can you say from the file or from your experience as to what exactly was the status of the defendant at that point? Was the classification reopened at that point?

A No, sir. In my opinion it was not.

Q But the Board had recommended that it be reopened?

A Right. The only interpretation I can
[29] give from my experience is that the Board felt they did not themselves have the authority to reopen. The Selective Service regulations give the State Director an unlimited authority to reopen and they were referring the matter to the State Director recommending that he use his unlimited authority to reopen.

Q Then he had the authority to reopen but they recommended it be reopened and they felt the facts were sufficient to reopen the classification?

A I would assume obviously they wanted to reopen but did not feel they had the authority to do so without the reopening being authorized by the State Director.

Q After it was sent back to the Board by the State Director's Office telling them that they did have the authority at that point can you say what his status was? Was it reopened or what was his status?

A No, sir. It would be in my opinion that the Local Board upon receiving this letter requested the welfare report with the idea that upon receipt of this and other information they may get, they would then take up the matter again and decide whether they would reopen or not.

Q But they already indicated in their summary on item 48 they felt it should be reopened, isn't that correct?

A Yes, sir. This is their recommendation. But they do not make a statement that they did reopen.
[30] They are asking authority from the State Director to allow them to.

THE COURT: Major, let me ask you. Would his classification have changed if he were given a six-months deferment?

THE WITNESS: Yes, sir. To the deferred classification I believe they were talking about was a 3-A.

THE COURT: 3-A for six months?

THE WITNESS: Yes, sir. For six months. And they are asking the State Director.

THE COURT: I understand. I wanted to know if a six-months deferment would result in a different classification?

THE WITNESS: Yes, sir.

THE COURT: As similar to withholding of an order to induct.

BY MR. CABELL:

Q Wouldn't a reopening in and of itself indicate a reclassification?

A If the Board had felt they had the authority to do so and had directed that a different classification be awarded, that would be a reopening.

Q But if the Board merely indicated it felt that his classification should be reopened would that be a change of classification?

[31] A No, sir. Not under the circumstances here in my opinion. If they had felt they had the authority they could have changed the registrant's classification.

THE COURT: Well, actually they did have the authority, didn't they, but didn't realize it?

THE WITNESS: This is a matter of opinion. I think

they didn't think they had. When it came to us we felt if they made a certain determination they could reopen.

THE COURT: Right. So you all felt that they did have the authority to do it if they wanted to?

THE WITNESS: If they wanted to right. Yes, sir.

BY MR. CABELL:

Q And they had indicated to you they wanted to reopen?

A Yes, sir. The record speaks for itself that they recommended the State Director—the Board recommends that the State Director reopen.

Q All right.

And there was the request for the welfare report and there was the welfare report and also a dependency questionnaire bringing up to date the current facts of the defendant?

A Yes, sir.

Q Now, had the Board previous to the dependency questionnaire being filed had before it the [32] matter of this boy's father's death since it had last heard the matter of a hardship classification report?

A Yes, sir. I think the record shows that the Board reviewed the case on September 25, isn't that correct? Yes, sir. The registrant and his mother and uncle appeared before the Board on the 25th of September, which is subsequent to the father's death.

Q Now, this report of the Welfare Department of Henrico County, item 34. This was new material that had not previously been before the Board, is that correct?

A Yes, sir.

Q And the next item, item 33, combines the ruling of the Local Board with an order to report for induction, is that correct?

A Yes, sir.

Instructions to the Board is continuing. This is merely reporting instructions, I think would be a proper designation.

Q Again you say you are not clear as to exactly what his status was as far as classification or the file being reopened between the date of March 13, 1970, and——

A No, sir. I wouldn't say I am not clear to my mind according to what has transpired. The man re-
[33] mained under the induction order and remained in Class 1-A.

Q Was there any indication from the file that the defendant was advised of his right to appeal from the failure of the Board to reclassify him on March 13, 1970?

A No, sir.

And according to my understanding of the regulation there would be no right of appeal under the circumstances.

Q But if the matter had been reopened previously and then changed there would be a right of appeal?

A That is correct.

Q And the Board did recommend to the State Headquarters that the matter be reopened indicating that they had made a decision based on facts that it should be reopened?

A That is the only conclusion we can reach.

Q Now, the report from the Welfare Department, item 34, refers only to the financial hardship or the financial background dealing with the defendant on his hardship claim, is that correct?

A I would say that is essentially—that they go into——

Q Doesn't the record indicate that previous to this the defendant had stated to the Board that in addition to the financial hardship there was a transportation hardship as well as an emotional hardship within the house-
[34] hold because of the death of his father, the insta-

bility of his younger sister, and his mother's inability to work?

A I believe this is information of this type, but I don't remember—I have to find the exact documents. But there is something to this effect in the record. When it was presented I am not—unless I would find it.

Q It is your understanding that the regulations dealing with the 3-A classification that that deals only with a financial hardship or does it deal with a hardship in other areas as well as a financial hardship?

A I believe the regulation states extreme hardship to the dependent and it is my understanding that this would not be only financial but could be other types. There is no further interpretation of the regulations.

Q So if the defendant was the only member of the family that could operate an automobile and they were unable to get around because of health reasons this would also be considered, is that correct?

A The Local Board presumably, if they made that determination, could say it was a hardship. It would be sufficient that would be their decision to make.

* * *

[Caption Omitted]

JUDGMENT AND COMMITMENT

(Filed September 3, 1970)

On this 3d day of September, 1970 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a finding of guilty has been convicted of the offense of failure to report for and to submit to induction into the Armed Forces of the United States, in violation of Title 50, Appendix Section 462, United States Code as charged in the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR (4) YEARS and SIX (6) MONTHS in an institution of a type and place to be designated by the Attorney General or his duly authorized representative, or until otherwise discharged as provided by law.

IT IS ADJUDGED that the defendant shall become eligible for parole at such time as the Parole Board may direct in accordance with the provisions of Title 18, Section 4208-(a)(2), United States Code.

IT IS FURTHER ADJUDGED that execution of sentence is suspended and defendant continued on present bond pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Robert R. Merhige, Jr.,
United States District Judge

The Court recommends commitment to

.....
Clerk

OPINION

No. 15,362

United States of America,

Appellee,

v.

Richard Newton Blaylock, Jr.,

Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert R. Merhige, Jr., District Judge.

(Argued April 8, 1971 Decided October 7, 1971.)

Before Haynsworth, Chief Judge, and Bryan and Butzner, Circuit Judges.

Robert G. Cabell, Jr., (White, Cabell, and Paris on brief) for Appellant, and Justin W. Williams, Assistant United States Attorney, (Brian P. Gettings, United States Attorney, on brief) for Appellee.

Albert V. Bryan, Circuit Judge:

After waiving his right to a jury, Richard Newton Blaylock, Jr., was convicted by the Court of willfully refusing to submit to induction into the Armed Forces, in violation of 50 USC 462, and was sentenced to a term of four years and six months. Blaylock appeals from the conviction on the ground that there was a de facto re-opening of his case by the local Board which entitled him to an administrative appeal from his classification of 1-A, but that nevertheless he was denied that appeal. We find there was no re-opening, and that he was duly classified for induction. The conviction is affirmed.

The facts as brought out at trial show that the appellant registered initially with Local Board # 54, Henrico County, Virginia, on April 14, 1966. He was given a student deferment for three years from that date, after which time he was classified 1-A. A physical examination on May 26, 1969, revealed that Blaylock was fit for military service. On a dependency questionnaire submitted to the local Board on May 30, 1969, the appellant indicated that his father's health was poor and that for this reason Blaylock did not know when he would have to become the family's sole support. The Board then re-opened Blaylock's classification, but reclassified him 1-A. His mother noted an appeal, but the Appeal Board sustained the 1-A classification on August 7, 1969. One week later Blaylock was ordered to report for induction on September 24, 1969.

On September 11, 1969, Blaylock notified the local Board of his father's death, stating that he was needed at home as his mother's "only means of support." The local Board then decided to postpone his induction date and to grant him a personal appearance at its meeting on September 25. At the end of this hearing they indicated that they did not "feel

justified in recommending this case" to the State Director for re-opening.

On September 29, the Board mailed to Blaylock a notice that his postponement had ended and that he was ordered to report for induction on October 28. Induction was again postponed, however, at the request of the State Director in order to allow for a second physical examination, this time by an orthopedic specialist. On October 24, the specialist found Blaylock fit for service.

The local Board then requested Blaylock to appear for another interview with them on January 15, 1970, to discuss his hardship case. After this session in January the Board decided to recommend to the State Director "a re-opening to give a 6 month deferment." The State Director's office did not re-open the classification, however, but returned the file to the local Board. Accompanying the file was a notation that the *local* Board had the authority to re-open, but that a dependency questionnaire should be completed and a welfare report obtained. Blaylock returned the questionnaire on January 27, 1970, stating in it that the family's house was paid for, but that his mother was unable to work and that it was his responsibility to "take over where his father left off." He listed his sister's income as $2000 per year.

The Henrico County Department of Welfare completed its report dealing with the Blaylocks' financial situation as requested by the Board and concluded that there was no necessity for the son to remain at home. It was pointed out that in addition to V.A. widow's benefits, Mrs. Blaylock could receive an allotment from her son during his term of service.

Following receipt of this welfare report, the local Board, on March 13, 1970, ordered Blaylock to report for induc-

tion on March 24, advising him that they could not recommend a re-opening of his classification. On the designated date he appeared and was found acceptable, but he refused induction on the basis of religious beliefs without mentioning his hardship claims. The present indictment followed shortly thereafter.

On this appeal from the conviction, counsel contends that Blaylock was not advised of his right of appeal from the classification and therefore should not have been ordered to report for induction. Unless his case had been re-opened, he had no right to appeal.

The sole issue presented then is whether the local Board, in recommending that the State Director re-open Blaylock's classification and in asking for additional information, actually re-opened the case.

The Government's chief witness, a Major Nathan H. Corman, Jr., on the staff of the State Director of Selective Service, testified that in his view the classification was not re-opened when the local Board recommended that the State Director re-open it. His opinion was that the local Board "wanted to re-open but did not feel they had the authority to do so without being authorized by the State Director." The major felt the local Board was contemplating a reconsideration after the welfare report and dependency questionnaire were in, but did not deem the classification re-opened prior to that time.

Since the appellant here had been sent a final order for induction on March 13, 1970, the local Board's actions were controlled by 32 CFR § 1625.2, which provides, inter alia, that

> "the classification of a registrant shall not be re-opened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252)

> or an Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) *unless the local board first specifically finds there has been a change in the registrant's statuts resulting from circumstances over which the registrant had no control.*" (Emphasis added.)

As stated by this court in *United States* v. *Bowen,* 421 F.2d 193, 197 (4 Cir. 1970), the right to appeal "arises only upon original classification or a reclassification after re-opening." Although *Bowen* was a conscientious objector case, the principle remains the same for all instances in which the induction notice has already been mailed. As was further pointed out in *Bowen, supra,* [a]n interview to afford defendant an opportunity to remedy the deficiencies in his case does not foreclose a refusal to re-open when, after every opportunity for proof, defendant's claim remains patently frivolous." 421 F.2d at 197.

In this instance the local Board was under a legal duty to ascertain whether there had been a change in Blaylock's status as a result of his father's death. To do this a certain amount of investigation was necessary, such investigation not constituting a reopening, but merely a preliminary inquiry as required by the regulations. Finding no change sufficient to warrant re-opening, the Board properly exercised its discretionary powers in denying Blaylock the deferment.

Accordingly, since no appeal is provided in the regulations from a failure to reopen in this context, Blaylock is not entitled to the relief he seeks.

Affirmed.